

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOE L. ROBINSON,

Plaintiff,

-vs-

FREEDOM FAITH MISSIONARY
BAPTIST CHURCH, et al.,

Defendant.

:

Case No. 3:04-cv-456

:

District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

REPORT AND RECOMMENDATIONS

This case is before the Court on the Amended Motion to Dismiss of Defendant Josie Bailey (Doc. No. 4). Plaintiff was duly notified of the required response date of January 28, 2005, and has never filed any opposition to the Motion.

Because the Court lacks subject matter jurisdiction of the claims made in the Complaint, as already set forth in the undersigned's Report and Recommendations of December 28, 2004 (Doc. No. 3), this case should be dismissed without prejudice for lack of jurisdiction.

May 7, 2005.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections

shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56. On a motion for summary judgment, the movant has the burden of showing that there exists no genuine issue of material fact, and the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157-59 (1970).

The instant Motion contains no facts or references to any evidentiary materials. It is evident that Plaintiff believes it is sufficient just to move the Court for summary judgment, but Rule 56 requires him to show that he is entitled to that relief, which he has not done.

Therefore, the Motion for Summary Judgment should be denied.

February 3, 2005.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

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